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TITLE 329 SOLID WASTE MANAGEMENT BOARD

#00-47(2)

READOPTION OF RULES IN TITLE 329 UNDER IC 13-14-9.5

The Indiana Department of Environmental Management (IDEM) has opened the following rules in Title 329 of the Indiana Administrative Code pursuant to comments received under IC 13-14-9.5: 329 IAC 1-1, 329 IAC 12-2, and 329 IAC 13-3. This rulemaking is required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of administrative rules. A rule that was adopted under a provision of IC 13 and was in effect on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, with some exceptions listed in IC 13-14-9.5-1, expire on January 1 of the seventh year after the year in which each rule takes effect. The First Notice of Comment Period and Continuation of First Notice of Comment Period opened all rules required to be opened in Title 329 for readoption, regardless of their initial effective date. Other comments received are being included and considered within other currently existing rulemakings. (See Summary/Response to Comments from the First Comment Period, 24 IR 169.)

Rules being readopted in this rulemaking are shown, in their entirety, as proposed rules. Rules not commented on during the First Notice of Comment Period or the Continuation of First Notice have been readopted by publication of a Notice of Readoption in the Indiana Register (24 IR 1518) pursuant to IC 13-14-9.5-4(c). Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2000, Indiana Register (23 IR 1491).

Continuation of First Notice Period: May 1, 2000, Indiana Register (23 IR 2138).

Second Notice of Comment Period and Notice of First Hearing: October 1, 2000, Indiana Register (24 IR 169).

Date of First Hearing: November 21, 2000; continued to January 16, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

Because this proposed rule is not substantively different from the draft rule published on October 1, 2000, at 24 IR 169, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from October 1, 2000, through October 30, 2000, on IDEM's draft rule language. IDEM received comments from the following parties:

Mark Shere, Bethlehem Steel Corporation (MS)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: IDEM needs to consider 329 IAC 13-3 in the context of the full article on used oil standards at 329 IAC 13. The purpose of the sunset statute, IC 13-14-9.5, was to encourage a pragmatic, overall evaluation of the rules, not a piecemeal analysis. (MS)

Response: IDEM agrees that the "sunset" statute provides for a periodic evaluation of the rules. However, IDEM did consider and evaluate the rules in the original rulemaking adopting 329 IAC 13-3. IDEM's position on the rationale for that adoption has not changed. The rules were based on federal, as well as state statutory requirements.

Comment: The state's used oil standards follow closely, but not exactly, the EPA regulations for used oil at 40 CFR part 279. (MS)

Response: IDEM agrees. Additional statutory requirements found at IC 13-30-2-1(14) were also included in the rule.

Comment: Ind. Code 4-22-2-19.5 required that state rules "avoid duplicating standards found in federal or state laws." Before proposing that the Solid Waste Board readopt the state rules at 329 IAC 13-3, IDEM should explain why it believes the state rules should duplicate extensive portions of the federal used oil standards. (MS)

Response: Because IDEM's rules are not verbatim the federal rules, due to the aforementioned statutory requirements, IDEM believed that complete enumeration of all requirements in the rule was both proper and consistent with the requirement of IC 4-22-2-19.5(a)(4), which provides that rules be written for ease of comprehension.

Comment: Ind. Code 4-22-2-19.5 required that state rules "achieve the regulatory goal in the least restrictive manner." If IDEM

believes that portions of the state rules at 329 IAC 13 need to be more restrictive than the federal used oil standards, it should identify the reasons for this increase stringency before proposing that the Solid Waste Board readopt the state rules. (MS)

Response: IC 4-22-2-19.5 requires, “[T]o the extent possible”, rules comply with a number of requirements, not merely that rules achieve the regulatory goals in the least restrictive manner. As stated during the original adoption hearings, the additional prohibitions are based on statutory requirements. These requirements remain intact.

Comment: IDEM should identify any actual, real world situations where it has found that the federal used oil standards at 40 CFR 279 are not sufficiently stringent. (MS)

Response: It is not necessary for IDEM to identify “real world scenarios” when it is carrying out the mandate of the Indiana legislature.

Comment: If no strong reason can be identified for the state’s used oil regulation to repeat the federal requirements, or to increase their stringency, then 329 IAC 13 should be replaced with a simple cross-reference to the federal requirements. (MS)

Response: Were there not additional state imposed requirements, IDEM would certainly agree.

Comment: Under IC 13-30-7, IDEM’s enforcement authority is limited to \$500 for certain types of minor violations of environmental violations. Under IC 13-30-7-7, the Solid Waste Management Board is required to adopt rules to implement this statute. To the best of Bethlehem’s knowledge, IDEM has never proposed to the Board that it adopt such rules. (MS)

Response: IC 13-30-7-7 does require the adoption of rules. However, no time frame was provided for the completion of such rules. Given IDEM’s limited resources, the large number of rulemakings required to implement other state and federal mandates, including the sunset process, IDEM must prioritize rulemakings to best use its limited resources.

Comment: Many types of used oil violations are minor in nature. These include labeling omissions, or small spills that are promptly cleaned up. (MS)

Response: IDEM does not believe the readoption process is the most appropriate process to use to implement IC 13-30-7-7, especially when that statute applies to all agency programs.

Comment: As it considers readoption of the used oil rules, the Solid Waste Management Board should identify classes of minor violations to begin to respond to its legal obligations under IC 13-30-7. (MS)

Response: IDEM does not believe that there is a need to implement IC 13-30-7-7 in order to effectively implement the used oil rules. IDEM generally does not take formal enforcement action requiring civil penalties solely for violations subject to IC 13-30-7-7.

Comment: Based on the above, Bethlehem recommends that current 329 IAC 13 should be repealed, or allowed to expire under IC 13-14-9, and replace with the following:

329 IAC 13-1 Adoption of federal standards for the management of used oil

Authority:

Affected:

Sec. 1. 40 CFR Part 279 is hereby incorporated by reference.

329 IAC 13-2 Identification of minor violations for purposes of IC 13-30-7

Authority:

Affected:

Sec. 1. For purposes of IC 13-30-7, “minor” violations of management standards for used oil include the following:

(a) Failure to use required labels at a facility. This provision is limited to facilities that have not received notice of this type of violation during the preceding 5 years.

(b) Spill or release of used oil in violation of management standards, where the spill or release is reported and cleaned up in compliance with applicable spill reporting and response requirements. (MS)

Response: For reasons cited above, IDEM does not believe that revisions to the existing rules are appropriate or needed.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On January 16, 2001, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 1-1, 329 IAC 12-2, and 329 IAC 13-3. Comments were made by the following parties:

Mark Shere, Bethlehem Steel (MS)

Following is a summary of the comments received and IDEM’s responses thereto:

Comment: The law of Indiana is that to the extent possible all rules adopted by this board and other administrative bodies shall be written for ease of comprehension. Indiana law says that rules adopted by the board and other administrative bodies must avoid duplicating standards found in the federal laws. In other words, incorporate the federal rules by reference, if need be, but keep the Indiana rule book understandable. The old rules basically expire every seven years. This expiration allows IDEM and this board to take a hard look at the old rules to see if they still serve a purpose and to see if they still comply with the law. (MS)

Response: Incorporating federal rules does not necessarily help with the ease of comprehension for state rules. Ease is a relative term. Someone operating in Indiana needs to only worry about complying with the state rules if the state is authorized for that program. Incorporation by reference means that the regulated community must deal with both the state and federal rules to find a

citation. It would be more difficult for an operator to have to jump back and forth with cross references to federal rules. Incorporation by reference also means that the regulated community must have access to the Code of Federal Regulations. IC 4-22-2-19.5(b) states that "Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law."

Comment: Here's what the used oil rule is today. There's little differences scattered all over the state rule, so I honestly don't know what a person needs to do differently under the state rule compared to the federal rule. (MS)

Response: At the final adoption in October 1996 of the used oil rules at 329 IAC 13, staff identified the differences between the federal requirement and the state rule. In the presentation staff stated, "The standards presented to you today are essentially the same as the federal standards for used oil management, with the following exceptions: No. 1, the use of used oil as a dust suppressant is prohibited by Indiana statute, and is therefore also prohibited in this proposed rule; No 2, for large and small quantity generators, mixtures of used oil and characteristic hazardous waste that are intended for recycling cannot be regulated as used oil under this article."

The Indiana Department of Environmental Management (IDEM) is delegated to administer the Used Oil Program in lieu of the federal government.

Comment: Indiana law, the statute, has one sentence about used oil. That sentence says a person may not apply or allow the application of used oil to any ground surfaces unless they get a permit; one sentence, easy to understand. None of the differences I've found in the 27 pages of Indiana rule and 24 pages of the federal rules have anything to do with that sentence. (MS)

Response: The statutory language was passed by the legislature to address the specific concern of road oiling. This happened at a time when a case occurred in another state where someone applied waste oil contaminated with PCBs to a county road. 329 IAC 13-10 addresses the use of used oil as a dust suppressant or for road oiling.

Comment: The federal rule does not have a provision to identify types of violations that could be considered minor, neither does the Indiana rule. That's a problem because the law of Indiana includes a minor violation statute that directs this board to adopt rules to identify what kind of violations are minor. This law is important to people because minor violations are subject to a lower penalty cap under the statute as long as you fix them right away, and you don't do it again. That minor violations statute is five years old, and IDEM has never presented this board with a single word of regulations-proposed regulation to put the law into effect. (MS)

Response: IDEM has implemented this law from its inception in 1995 in enforcement referrals and enforcement policies. The majority of discovered violations that qualify as a "minor violation" under this statute are handled without a formal referral to IDEM's enforcement office and without any civil penalty. If the environmental boards decide to go forward with a rulemaking to formally implement IC 13-30-7-1 et seq., the Agency would present them with a framework of criteria for assessing the "minor" status of a particular violation or set of violations, in lieu of categorizing the thousands of potential situations that may exist. Those criteria would mirror the existing statutory provisions and would likely reflect the same common sense approach that the Agency is currently using to remedy minor regulatory violations without resorting to formal enforcement action.

Comment: Please do not preliminarily adopt this rule today. Please ask IDEM to take the hard look at this rule that the agency has so conspicuously avoided. Ask IDEM to delete language that repeats the federal rules unless there's a good reason to keep it. And ask IDEM to identify each place that these rules, the state rules, are different from the federal standards so that people at least understand what's going on here and to give a good reason for differences that are to be kept. (MS)

Response: The United States Environmental Protection Agency has delegated the Used Oil Program at 40 CFR 279 to Indiana to administer. This means that the Indiana rules are at least as stringent as the federal rules and are to be used in place of the federal rules in Indiana.

329 IAC 1-1-1	329 IAC 12-2-27.2
329 IAC 1-1-2	329 IAC 12-2-28
329 IAC 1-1-3	329 IAC 12-2-29
329 IAC 1-1-4	329 IAC 12-2-30
329 IAC 12-2-1	329 IAC 12-2-31
329 IAC 12-2-2	329 IAC 12-2-31.5
329 IAC 12-2-2.1	329 IAC 12-2-32
329 IAC 12-2-2.2	329 IAC 12-2-33
329 IAC 12-2-2.3	329 IAC 12-2-34
329 IAC 12-2-2.4	329 IAC 12-2-35
329 IAC 12-2-3	329 IAC 12-2-36
329 IAC 12-2-4	329 IAC 12-2-37
329 IAC 12-2-5	329 IAC 12-2-38
329 IAC 12-2-5.1	329 IAC 12-2-39
329 IAC 12-2-5.2	329 IAC 12-2-40
329 IAC 12-2-6	329 IAC 12-2-41
329 IAC 12-2-7	329 IAC 12-2-42
329 IAC 12-2-8	329 IAC 12-2-43
329 IAC 12-2-9	329 IAC 12-2-44
329 IAC 12-2-10	329 IAC 12-2-45
329 IAC 12-2-11	329 IAC 12-2-46
329 IAC 12-2-11.1	329 IAC 12-2-47
329 IAC 12-2-12	329 IAC 12-2-48
329 IAC 12-2-13	329 IAC 12-2-49
329 IAC 12-2-14	329 IAC 12-2-50
329 IAC 12-2-15	329 IAC 12-2-51
329 IAC 12-2-16	329 IAC 12-2-52
329 IAC 12-2-17	329 IAC 12-2-53
329 IAC 12-2-18	329 IAC 12-2-54
329 IAC 12-2-19	329 IAC 12-2-55
329 IAC 12-2-20	329 IAC 12-2-56
329 IAC 12-2-21	329 IAC 12-2-57
329 IAC 12-2-21.1	329 IAC 12-2-58
329 IAC 12-2-22	329 IAC 12-2-59
329 IAC 12-2-23	329 IAC 12-2-60
329 IAC 12-2-24	329 IAC 12-2-61
329 IAC 12-2-25	329 IAC 12-2-62
329 IAC 12-2-26	329 IAC 13-3-1
329 IAC 12-2-27	329 IAC 13-3-2
329 IAC 12-2-27.1	329 IAC 13-3-3

SECTION 1. 329 IAC 1-1-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 1-1-1 Applicability of rule

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3

Sec. 1. This rule (329 IAC 1-1) is applicable to all of Title 329 IAC. (*Solid Waste Management Board; 329 IAC 1-1-1; filed May 31, 1988, 2:42 p.m.: 11 IR 3199*)

SECTION 2. 329 IAC 1-1-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 1-1-2 Severability

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3; IC 13-14-8

Sec. 2. If any provision of these rules (329 IAC) or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect any other provisions or applications of these rules (329 IAC) which can be given effect without the invalid provision or application. *(Solid Waste Management Board; 329 IAC 1-1-2; filed May 31, 1988, 2:42 p.m.: 11 IR 3200)*

SECTION 3. 329 IAC 1-1-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 1-1-3 Savings clause

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3; IC 13-14-8

Sec. 3. The repeal and reenactment in this Title (329 IAC) of any rule previously the responsibility of the Solid Waste Management Board, the Environmental Management Board, or the Stream Pollution Control Board shall not have the effect to release or extinguish any penalty or forfeiture incurred under the same, and such previous rule shall be treated as still remaining on in force for the purpose of sustaining any proper action, or prosecution for the enforcement of such penalty, forfeiture or liability. *(Solid Waste Management Board; 329 IAC 1-1-3; filed May 31, 1988, 2:42 p.m.: 11 IR 3200)*

SECTION 4. 329 IAC 1-1-4 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

329 IAC 1-1-4 Reference to Federal Acts

Authority: IC 13-17-3; IC 13-14-8

Affected: IC 13-17-3; IC 13-14-8

Sec. 4. (a) Unless otherwise indicated, references in these rules (329 IAC) to the Resource Conservation and Recovery Act (RCRA) shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, by the Hazardous and Solid Waste Amendments of 1984, as amended, 4 U.S.C. § 6901, et seq. Unless otherwise indicated, references in these rules (329 IAC) to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, 42 U.S.C. § 9601, et seq. Unless otherwise indicated, references in these rules (329 IAC) to the Toxic Substances Control Act (TSCA) shall mean the Toxic Substances Control Act as amended by the Asbestos Hazard Emergency Response Act of 1986, as amended, 15 U.S.C. § 2601 et seq.

(b) Unless otherwise indicated, as in ~~329 IAC 3-1-6~~, **329 IAC 3.1**, references to the Code of Federal Regulations (CFR) shall mean the 1987 version. *(Solid Waste Management Board; 329 IAC 1-1-4; filed May 31, 1988, 2:42 p.m.: 11 IR 3200)*

SECTION 5. 329 IAC 12-2-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-1 Definitions

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 1. In addition to the definitions found in IC 13-11-2, the definitions in this rule apply only to this article. *(Solid Waste Management Board; 329 IAC 12-2-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813)*

SECTION 6. 329 IAC 12-2-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-2 “Access road” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 2. “Access road” means a road that leads to the entrance of a solid waste management activity, normally a county, state, or federal highway. *(Solid Waste Management Board; 329 IAC 12-2-2; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1952)*

SECTION 7. 329 IAC 12-2-2.1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-2.1 “Accredited examination” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 2.1. "Accredited examination" means a written examination accredited by the commissioner for the purposes of testing individuals seeking to become certified as solid waste facility operators. (*Solid Waste Management Board; 329 IAC 12-2-2.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1479*)

SECTION 8. 329 IAC 12-2-2.2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-2.2 "Accredited examination provider" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 2.2. "Accredited examination provider" means a person or a postsecondary learning institution that provides an accredited examination for the purpose of certifying operators in accordance with 329 IAC 12-7 and 329 IAC 12-8. (*Solid Waste Management Board; 329 IAC 12-2-2.2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1479*)

SECTION 9. 329 IAC 12-2-2.3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-2.3 "Accredited training course" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 2.3. "Accredited training course" means a course accredited by the commissioner for the purposes of providing solid waste facility operator training for recertification. (*Solid Waste Management Board; 329 IAC 12-2-2.3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1479*)

SECTION 10. 329 IAC 12-2-2.4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-2.4 "Accredited training course provider" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2
Affected: IC 13-15-10; IC 36-9-30

Sec. 2.4. "Accredited training course provider" means a person or a postsecondary learning institution that provides an accredited training course for the purpose of recertifying operators in accordance with 329 IAC 12-7 and 329 IAC 12-9. (*Solid Waste Management Board; 329 IAC 12-2-2.4; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480*)

SECTION 11. 329 IAC 12-2-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-4 "Base flood" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 4. "Base flood" means a flood that has a one percent (1%) or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in one hundred (100) years, on the average, over a significantly long period. In any given one hundred (100) year interval, such a flood may not occur or more than one (1) such flood may occur. (*Solid Waste Management Board; 329 IAC 12-2-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1953*)

SECTION 12. 329 IAC 12-2-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-5 "Board" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10
Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 5. "Board" means the solid waste management board. (*Solid Waste Management Board; 329 IAC 12-2-5; filed Mar 14, 1996,*

5:00 p.m.: 19 IR 1953; errata filed Dec 6, 1999, 9:41 a.m.: 23 IR 813)

SECTION 13. 329 IAC 12-2-5.1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-5.1 “Certificate” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 5.1. “Certificate” means a document issued by the commissioner to an individual meeting the testing requirements of 329 IAC 12-7 and 329 IAC 12-8. (*Solid Waste Management Board; 329 IAC 12-2-5.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480*)

SECTION 14. 329 IAC 12-2-5.2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-5.2 “Certified operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 5.2. “Certified operator” means an individual:

(1) with responsibility for the daily operation of the facility; and

(2) who holds a current certificate of training issued by the commissioner.

(*Solid Waste Management Board; 329 IAC 12-2-5.2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480*)

SECTION 15. 329 IAC 12-2-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-6 “Collection container system” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 6. “Collection container system” means a group of containers for solid waste collection from noncommercial, nonindustrial, and noninstitutional sources, and made available for use by the general public such as a county wide collection box system. (*Solid Waste Management Board; 329 IAC 12-2-6; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1953*)

SECTION 16. 329 IAC 12-2-11.1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-11.1 “Facility” defined

Authority: IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 25-31; IC 36-9-30

Sec. 11.1. “Facility” may consist of one (1) or more permitted processing, storage, disposal, or operational units used for processing, storing in conjunction with processing or disposal, or disposing of solid waste. The term includes:

(1) all conterminous land and structures related to the permit;

(2) other appurtenances related to the permit; and

(3) improvements on the land related to the permit.

(*Solid Waste Management Board; 329 IAC 12-2-11.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480*)

SECTION 17. 329 IAC 12-2-13 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

329 IAC 12-2-13 “Generating facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 13. “Generating facility” means any person or site, at, on, or by which one (1) or more solid wastes are generated; such as a large manufacturing plant that may have more than one (1) source of solid waste at the plant location. The term does not include hazardous waste generator as regulated by 329 IAC 3-1. has the meaning set forth in 329 IAC 11-2-12. (*Solid Waste Management Board; 329 IAC 12-2-13; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954*)

SECTION 18. 329 IAC 12-2-15 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-15 “Grading” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 15. “Grading” means the contouring of land so that surface water flow and erosion are controlled according to a predetermined plan. *(Solid Waste Management Board; 329 IAC 12-2-15; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954)*

SECTION 19. 329 IAC 12-2-16 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-16 “Ground water” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 16. “Ground water” means water below the land surface in the zone of saturation. *(Solid Waste Management Board; 329 IAC 12-2-16; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954)*

SECTION 20. 329 IAC 12-2-18 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-18 “Incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 18. “Incinerator” has the meaning set forth in 329 IAC 11-2-16. *(Solid Waste Management Board; 329 IAC 12-2-18; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1954)*

SECTION 21. 329 IAC 12-2-21 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-21 “Infectious waste incinerator” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 21. “Infectious waste incinerator” has the meaning set forth in 329 IAC 11-2-19. *(Solid Waste Management Board; 329 IAC 12-2-21; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1955)*

SECTION 22. 329 IAC 12-2-21.1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-21.1 “Interim operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 21.1. “Interim operator” means an individual:

- (1) with responsibility for the daily operation of the facility; and
- (2) that does not yet hold a current certificate issued by the commissioner.

(Solid Waste Management Board; 329 IAC 12-2-21.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480)

SECTION 23. 329 IAC 12-2-24 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-24 “On-site road” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 24. “On-site road” means a road for the passage of vehicles from a solid waste management activity entrance to the activity area. *(Solid Waste Management Board; 329 IAC 12-2-24; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1955)*

SECTION 24. 329 IAC 12-2-27 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-27 “Operating personnel” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 27. “Operating personnel” means persons necessary to properly operate a solid waste management activity. (*Solid Waste Management Board; 329 IAC 12-2-27; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1955*)

SECTION 25. 329 IAC 12-2-27.1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-27.1 “Operator” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 27.1. “Operator” means the person or persons responsible for the overall operation of a facility or part of a facility. (*Solid Waste Management Board; 329 IAC 12-2-27.1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480*)

SECTION 26. 329 IAC 12-2-27.2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-27.2 “Owner” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 27.2. “Owner” means the person who owns a facility or part of a facility. (*Solid Waste Management Board; 329 IAC 12-2-27.2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1480*)

SECTION 27. 329 IAC 12-2-30 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-30 “Pollution control waste” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 30. “Pollution control waste” includes liquid, solid, semisolid, or gaseous waste generated as a direct or indirect result from the removal of contaminants from air, water, or land that may include, but is not limited to, such waste as water and wastewater treatment sludges, baghouse dust, scrubber sludges, chemical spills, or remedial activity clean-up wastes. (*Solid Waste Management Board; 329 IAC 12-2-30; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956*)

SECTION 28. 329 IAC 12-2-31 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-31 “Processing” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 31. “Processing” has the meaning set forth in 329 IAC 11-2-30. (*Solid Waste Management Board; 329 IAC 12-2-31; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956*)

SECTION 29. 329 IAC 12-2-31.5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-31.5 “Recertification” defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-14-8-7; IC 13-15-10-4; IC 13-19-3-1; IC 13-19-3-2

Affected: IC 13-15-10; IC 36-9-30

Sec. 31.5. “Recertification” means the procedures under 329 IAC 12-7 and 329 IAC 12-9 to renew a certification for a certified operator meeting the applicable training requirements. (*Solid Waste Management Board; 329 IAC 12-2-31.5; filed Feb 3, 1997, 9:15*

a.m.: 20 IR 1480)

SECTION 30. 329 IAC 12-2-33 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-33 “Registered professional engineer” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 33. “Registered professional engineer” means a professional engineer registered by the state of Indiana under IC 25-31. (*Solid Waste Management Board; 329 IAC 12-2-33; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956*)

SECTION 31. 329 IAC 12-2-35 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-35 “Residue” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 35. “Residue” has the meaning set forth in 329 IAC 11-2-33. (*Solid Waste Management Board; 329 IAC 12-2-35; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956*)

SECTION 32. 329 IAC 12-2-36 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-36 “Resource recovery” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 36. “Resource recovery” has the meaning set forth in 329 IAC 11-2-34. (*Solid Waste Management Board; 329 IAC 12-2-36; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956*)

SECTION 33. 329 IAC 12-2-38 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-38 “Salvaging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 38. “Salvaging” means the controlled and organized removal of materials from solid waste for utilization. (*Solid Waste Management Board; 329 IAC 12-2-38; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1956*)

SECTION 34. 329 IAC 12-2-39 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-39 “Scavenging” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 39. “Scavenging” means the uncontrolled and unauthorized removal of materials from solid waste. (*Solid Waste Management Board; 329 IAC 12-2-39; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957*)

SECTION 35. 329 IAC 12-2-41 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-41 “Site” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 41. “Site” means the land area on which the registered solid waste management activity is situated. (*Solid Waste Management Board; 329 IAC 12-2-41; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957*)

SECTION 36. 329 IAC 12-2-42 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-42 “Sludge” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 42. “Sludge” means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant. (*Solid Waste Management Board; 329 IAC 12-2-42; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957*)

SECTION 37. 329 IAC 12-2-44 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-44 “Solid waste facility” or “facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 44. “Solid waste facility” or “facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for processing, storing in conjunction with processing or disposal, or disposing of solid waste and may consist of several processing, storage, or disposal operational units, for example, one (1) or more landfills, surface impoundments, or combinations thereof. (*Solid Waste Management Board; 329 IAC 12-2-44; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957*)

SECTION 38. 329 IAC 12-2-45 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-45 “Solid waste land disposal facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 45. “Solid waste land disposal facility” has the meaning set forth in 329 IAC 10-2-176. (*Solid Waste Management Board; 329 IAC 12-2-45; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957*)

SECTION 39. 329 IAC 12-2-46 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-46 “Solid waste management” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 46. “Solid waste management” means the systematic administration of activities that provide for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste. (*Solid Waste Management Board; 329 IAC 12-2-46; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1957*)

SECTION 40. 329 IAC 12-2-47 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-47 “Solid waste processing facility” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 47. “Solid waste processing facility” has the meaning set forth in 329 IAC 11-2-43. (*Solid Waste Management Board; 329 IAC 12-2-47; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1958*)

SECTION 41. 329 IAC 12-2-49 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-49 “Surface impoundment” defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 49. (a) "Surface impoundment" means a facility or part of a facility that:

- (1) is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials;
- (2) holds or is designed to hold an accumulation of liquid wastes or wastes containing free liquids; and
- (3) is not an injection well.

(b) Examples of surface impoundments may include the following:

- (1) Holding, storage, settling, and aeration pits.
- (2) Holding, storage, settling, and aeration ponds.
- (3) Holding, storage, settling, and aeration lagoons.

(Solid Waste Management Board; 329 IAC 12-2-49; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1958)

SECTION 42. 329 IAC 12-2-50 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

329 IAC 12-2-50 "Surface water" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 50. "Surface water" means water present on the surface of the earth, including:

- (1) streams;
- (2) lakes;
- (3) ponds;
- (4) rivers;
- (5) swamps;
- (6) marshes; or
- (7) rainwater present on the earth: has the meaning set forth in 329 IAC 11-2-46.

(Solid Waste Management Board; 329 IAC 12-2-50; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1958)

SECTION 43. 329 IAC 12-2-52 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-52 "Transfer station" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 52. "Transfer station" has the meaning set forth in 329 IAC 11-2-47. *(Solid Waste Management Board; 329 IAC 12-2-52; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1959)*

SECTION 44. 329 IAC 12-2-54 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 12-2-54 "Vector" defined

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1; IC 13-19-4-10

Affected: IC 13-30-2; IC 25-31; IC 36-9-30

Sec. 54. "Vector" means any animal capable of harboring and transmitting micro-organisms from one (1) animal to another or to a human. *(Solid Waste Management Board; 329 IAC 12-2-54; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1959)*

SECTION 45. 329 IAC 13-3-1 IS READOPTED AND AMENDED TO READ AS FOLLOWS:

329 IAC 13-3-1 Applicability

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 261; 40 CFR 761.20(e)

Sec. 1. (a) The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 2 of this rule, this article applies to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste

identified in 40 CFR 261 Subpart C.

(b) Mixtures of used oil and hazardous waste must be handled as follows:

(1) For mixtures of used oil with a listed hazardous waste, the following shall apply:

(A) Mixtures of used oil and hazardous waste that is listed in 40 CFR 261 Subpart D are subject to regulation as hazardous waste under 329 IAC 3.1 rather than as used oil under this article.

(B) Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste. For example, this may be done by using an analytical method from EPA publication SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR 261 Appendix VIII. EPA publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. Request document number 955-001-00000-1. The rebuttable presumption does not apply to the following:

(i) Metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in 329 IAC 13-4-5(c), to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner or disposed.

(ii) Used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C are subject to 329 IAC 3.1.

(3) Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under 40 CFR 261.5 are subject to regulation as used oil under this article.

(c) Materials containing or otherwise contaminated with used oil must be handled as follows:

(1) Except as provided in subdivision (2), materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(A) are not used oil and thus not subject to this article;

(B) if applicable, are subject to the hazardous waste regulations under 329 IAC 3.1; and

(C) if applicable, are subject to the **special industrial** waste regulations under 329 IAC 10.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this article.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this article.

(d) Mixtures of used oil with products must be handled as follows:

(1) Except as provided in subdivision (2), mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this article.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this article once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of 329 IAC 13-4.

(e) Materials derived from used oil must be handled as follows:

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, such as re-refined lubricants, are:

(A) not used oil and thus are not subject to this article; and

(B) not solid wastes and are thus not subject to the hazardous waste regulations under 329 IAC 3.1 as provided in 40 CFR 261.3(c)(2)(A).

(2) Materials produced from used oil that are burned for energy recovery, such as used oil fuels, are subject to regulation as used oil under this article.

(3) Except as provided in subdivision (4), materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(A) not used oil and thus are not subject to this article; and

(B) are solid wastes and thus are subject to:

(i) if applicable, the hazardous waste regulations under 329 IAC 3.1 if the materials are listed or identified as hazardous waste; and

(ii) if applicable, the special waste regulations under 329 IAC 10.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this article.

(f) Wastewater, the discharge of which is subject to regulation under either Section 402 or 307(b) of the Clean Water Act, including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of this article. As used in this subsection, “de minimis quantities of used oils” means small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility must be handled as follows:

(1) Used oil mixed with crude oil or natural gas liquids, such as in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of this article. The used oil is subject to the requirements of this article prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent (1%) used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this article.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this article provided that the used oil constitutes less than one percent (1%) of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(4) Except as provided in subdivision (5), used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this article only if the used oil meets the specification of section 2 of this rule. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this article.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as an article of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this article. This exemption does not extend to used oil that is intentionally introduced into a hydrocarbon recovery system, such as by pouring collected used oil into the wastewater treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this article.

(h) Used oil produced on vessels from normal shipboard operations is not subject to this article until it is transported ashore.

(i) In addition to the requirements of this article, marketers and burners of used oil who market used oil containing any quantifiable level of polychlorinated biphenyls (PCBs) are subject to the requirements found at 40 CFR 761.20(e). (*Solid Waste Management Board; 329 IAC 13-3-1; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1494*)

SECTION 46. 329 IAC 13-3-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 13-3-2 Used oil specifications

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30

Sec. 2. Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this article unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with 329 IAC 13-9-3, 329 IAC 13-9-4, and 329 IAC 13-9-5(b), the used oil is no longer subject to this article.

Table 1-Used Oil not Exceeding any Specification Level is not Subject to this Article when Burned for Energy Recovery¹

Constituent or Property	Allowable Level
Arsenic	5 ppm maximum

Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100°F minimum
Total halogens	4,000 ppm maximum ²

¹The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (See section 1(b) of this rule.).

²Used oil containing more than one thousand (1,000) parts per million total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under section 1(b) of this rule. Such used oil is subject to 40 CFR 266 Subpart H rather than this article when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

(Solid Waste Management Board; 329 IAC 13-3-2; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1495)

SECTION 47. 329 IAC 13-3-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

329 IAC 13-3-3 Prohibitions

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-19-3

Affected: IC 13-11-2; IC 13-14; IC 13-19; IC 13-20; IC 13-22; IC 13-23; IC 13-30; 40 CFR 260.10; 40 CFR 264; 40 CFR 265

Sec. 3. (a) Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under 40 CFR 264 or 40 CFR 265.

(b) The use of used oil as a dust suppressant is prohibited.

(c) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in 40 CFR 260.10.

(2) Boilers, as defined in 40 CFR 260.10, that are identified as any of the following:

(A) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(B) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale.

(C) Used oil-fired space heaters provided that the burner meets the provisions of 329 IAC 13-4-4.

(3) Hazardous waste incinerators subject to regulation under 40 CFR 264 Subpart O or 40 CFR 265.

(Solid Waste Management Board; 329 IAC 13-3-3; filed Feb 3, 1997, 9:15 a.m.: 20 IR 1496)

SECTION 48. THE FOLLOWING ARE REPEALED: 329 IAC 12-2-3; 329 IAC 12-2-7; 329 IAC 12-2-8; 329 IAC 12-2-9; 329 IAC 12-2-10; 329 IAC 12-2-11; 329 IAC 12-2-12; 329 IAC 12-2-14; 329 IAC 12-2-17; 329 IAC 12-2-19; 329 IAC 12-2-20; 329 IAC 12-2-22; 329 IAC 12-2-23; 329 IAC 12-2-25; 329 IAC 12-2-26; 329 IAC 12-2-28; 329 IAC 12-2-29; 329 IAC 12-2-32; 329 IAC 12-2-34; 329 IAC 12-2-37; 329 IAC 12-2-40; 329 IAC 12-2-43; 329 IAC 12-2-48; 329 IAC 12-2-51; 329 IAC 12-2-53; 329 IAC 12-2-55; 329 IAC 12-2-56; 329 IAC 12-2-57; 329 IAC 12-2-58; 329 IAC 12-2-59; 329 IAC 12-2-60; 329 IAC 12-2-61; 329 IAC 12-2-62.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on May 15, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on readoption of and proposed amendments to 329 IAC 1-1, 329 IAC 12-2, and 329 IAC 13-3.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, IN 46206-6015

or call (317) 233-1785 (V) or (317) 233-6565(TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Twelfth Floor East, and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.